



## DEPARTMENT OF COMMERCE

**Docket No. [ 220324-0077 ]**

### **Privacy Act of 1974; System of Records**

**AGENCY:** Department of Commerce, Office of Inspector General.

**ACTION:** Notice of a modified system of records.

**SUMMARY:** In accordance with the Privacy Act of 1974, as amended (Privacy Act), and the Office of Management and Budget (OMB) Circular A-108, “Federal Agency Responsibilities for Review, Reporting, and Publication under the Privacy Act,” the Department of Commerce (the Department) is issuing this notice of its intent to amend the system of records under “COMMERCE/DEPT-12, OIG Investigative Records” to change the system name to “COMMERCE/OIG-1, OIG Investigative Records,” and to generally update the system’s notice. This system of records is used by the Department’s Office of Inspector General (OIG) to carry out its statutory responsibilities under the Inspector General Act of 1978, as amended (Inspector General Act) to conduct and supervise investigations, prevent and detect fraud, waste, mismanagement, and abuse, and promote economy, efficiency, and effectiveness in Department programs and operations. We invite public comment on the system amendments announced in this publication.

**DATES:** This amended system of records will become effective upon publication, subject to a 30-day comment period in which to comment on new or amended routine uses. To be considered, written comments must be submitted on or before **[INSERT DATE 30 DAYS AFTER PUBLICATION IN THE *FEDERAL REGISTER*]**.

**ADDRESSES:** Please address comments to the Office of Inspector General Office of Counsel, Room 7896, U.S. Department of Commerce, 1401 Constitution Avenue N.W., Washington, DC 20230; by email to [OIGCounsel@oig.doc.gov](mailto:OIGCounsel@oig.doc.gov); or by facsimile to (202) 501-7335.

**FOR FURTHER INFORMATION CONTACT:** OIG Office of Counsel Phone: (202) 792-3317.

**SUPPLEMENTARY INFORMATION:** This notice announces several changes to the system of records for OIG investigative records. The sections of the system's notice to be updated are: System Name; Security Classification; System Locations; Categories of Individuals Covered by the System; Categories of Records in the System; Authority for Maintenance of the System; Purposes; Routine Uses of Records Maintained in the System; Storage; Safeguards; Retention and Disposal; System Manager and Address; Record Access Procedures; Record Source Categories; and System Exemptions. Newly proposed routine use (RU) numbers 8 and 25 are being added to permit, respectively, disclosures to the Office of Government Information Services (OGIS), National Archives and Records Administration (NARA) in connection with OGIS's responsibilities under the Freedom of Information Act, 5 U.S.C. 552, and to public authorities for use in computer matching programs. In addition, RU 21 is updated, and new RU 22 is added in accordance with Office of Management and Budget (OMB) Memorandum M-17-12. This amendment also moves part of existing RU 9 (COMMERCE/DEPT-12) (now RU 10) to a separately numbered new RU 5, with no substantive change, and makes clarifying changes to RUs numbered below as 1, 5, and 23. Throughout the notice, this amendment makes other minor changes or administrative edits, including the reordering of sections consistent with OMB guidance, the deletion of RU 1 (COMMERCE/DEPT-12), which is duplicative as encompassed by RU 10 (COMMERCE/DEPT-12) (now RU 11), and the renumbering of RUs as needed to reflect that deletion as well as the addition of the newly proposed RUs described above. The changes are needed to ensure that the notice for this system of records is up-to-date, accurate, and current, as required by the Privacy Act. OMB Circular A-108 requires agencies to periodically review systems of records notices for accuracy and completeness, paying special attention to changes in the manner in which records are organized, indexed, or retrieved that result in a change in the nature or scope of these records. When any of the aforementioned

changes occur, the Privacy Act requires agencies to publish in the Federal Register upon revision of a system of records, a notice that describes the amendments to the system of records.

The Privacy Act also requires each agency that proposes to establish a new system of records, or significantly modify an existing system of records (such as by adding new routine uses), to provide adequate advance notice of any such proposal to the OMB, the Committee on Oversight and Reform of the House of Representatives, and the Committee on Homeland Security and Governmental Affairs of the Senate (5 U.S.C 552a(r)). The purpose of providing the advance notice to OMB and Congress is to permit an evaluation of the potential effect of the proposal on the privacy and other rights of individuals. The Department filed a report describing the amended system of records covered by this notice with the Chair of the Senate Committee on Homeland Security and Governmental Affairs, the Chair of the House Committee on Oversight and Reform, and the Deputy Administrator of the Office of Information and Regulatory Affairs, OMB, on March 29, 2022.

**SYSTEM NAME AND NUMBER:** COMMERCE/OIG-1, OIG Investigative Records.

**SECURITY CLASSIFICATION:** Controlled Unclassified Information (CUI).

**SYSTEM LOCATIONS:** U.S. Department of Commerce, Office of Inspector General, 1401 Constitution Avenue N.W., Washington, DC 20230, and U.S. Department of Commerce, Office of Inspector General, regional and field offices.

**SYSTEM MANAGER AND ADDRESS:** Assistant Inspector General for Investigations, Room 7886B, Office of Inspector General, United States Department of Commerce, 1401 Constitution Ave. N.W., Washington, DC 20230.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:** The Inspector General Act of 1978, as amended, 5 U.S.C. App. (Inspector General Act).

**PURPOSE(S) OF THE SYSTEM:** The records contained in this system are used or are available for use by the Office of Inspector General (OIG) to carry out its statutory responsibilities under the Inspector General Act to conduct and supervise investigations, prevent

and detect fraud, waste, mismanagement, and abuse, and promote economy, efficiency, and effectiveness in the programs and operations of the Department of Commerce (the Department). The records may be used in the course of investigating individuals and entities suspected of criminal, civil, or administrative misconduct and in supporting related judicial and administrative proceedings or in conducting preliminary inquiries undertaken to determine whether to commence an investigation.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:** In connection with its investigative duties, OIG maintains records in its records system on the following categories of individuals insofar as they may be relevant to any investigation or preliminary inquiry undertaken to determine whether to commence an investigation: subjects of investigations; complainants; witnesses; confidential and non-confidential informants; contractors; subcontractors; recipients of Federal funds and their contractors/subcontractors and employees; individuals interacting with Department employees or management; current, former, and prospective Department employees; alleged violators of Department rules and regulations; union officials; individuals who are investigated and/or interviewed; persons suspected of violations of administrative, civil, and/or criminal provisions; grantees; sub-grantees; lessees; licensees; persons engaged in official business with the Department; or other persons identified by OIG or by other agencies, constituent units of the Department, and members of the general public in connection with the authorized functions of the OIG.

**CATEGORIES OF RECORDS IN THE SYSTEM:** The system contains investigative reports and materials received, gathered, or created regarding or supporting investigations, or preliminary inquiries undertaken to determine whether to commence an investigation, of administrative, civil, and criminal matters by OIG and/or other Federal, State, local, tribal, territorial, non-governmental, international, foreign regulatory, or foreign law enforcement agencies or entities. Categories of records may include: complaints; requests to investigate; information contained in criminal, civil, or administrative referrals; statements from subjects

and/or witnesses; affidavits, transcripts, police reports, photographs, and/or documents relative to a subject's prior criminal record; medical records; accident reports; materials and intelligence information from other governmental investigatory or law enforcement organizations; information relative to the status of a particular complaint or investigation, including any determination relative to criminal prosecution, civil, or administrative action; general case management documentation; subpoenas and evidence obtained in response to subpoenas; evidence logs; pen registers; correspondence; personal information, including financial, employment, and biometric data and Social Security Numbers; forensic computer images; records of investigation; and other data and evidence received, collected, or generated by OIG's Office of Investigations while conducting its official duties. Social Security Numbers are maintained in the system pursuant to authority under the Inspector General Act and are collected or received and maintained in the system as necessary by OIG to carry out its statutory responsibilities under the Inspector General Act.

**RECORD SOURCE CATEGORIES:** As described below in "Exemptions Promulgated for the System," the OIG claims an exemption from disclosure of record source categories under 5 U.S.C. 552a(e)(4)(I). Notwithstanding the foregoing, OIG may collect information from a wide variety of sources, including information from the Department and other Federal, State, and local agencies, subjects, witnesses, complainants, victims, confidential and non-confidential sources, individuals, and non-governmental entities.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING**

**CATEGORIES OF USERS AND PURPOSES OF SUCH USES:** In addition to those disclosures generally permitted under 5 U.S.C. 552a(b), all or a portion of the records or information contained in this system may be disclosed to authorized individuals and/or entities, as is determined to be compatible with the purposes for which the record was collected, as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

1. In the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to duly-authorized investigators or opposing parties in the course of discovery or settlement negotiations.
2. To a Member of Congress submitting a request involving an individual when the individual has requested assistance from the Member with respect to the subject matter of the record.
3. To the Office of Management and Budget (OMB) in connection with the review of private relief legislation as set forth in OMB Circular No. A-19 at any stage of the legislative coordination and clearance process as set forth in that Circular.
4. To the Department of Justice (DOJ) or any other Federal agency that has an interest in the record in connection with determining whether disclosure thereof is required by the Freedom of Information Act (5 U.S.C. 552) (FOIA).
5. To DOJ or any other Federal agency, to the extent necessary to obtain their advice on any matter relevant to an OIG investigation, including matters concerning the FOIA and the Privacy Act (5 U.S.C. 552a).
6. To the Office of Personnel Management (OPM) for personnel research purposes; as a data source for management information; for the production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained; or for related manpower studies.
7. To the General Services Administration (GSA) or the National Archives and Records Administration (NARA) during an inspection of records conducted by GSA or NARA under the authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA or NARA regulations governing inspection of records for this purpose and any other relevant (i.e., GSA, NARA, or Department) directive. Such disclosure shall not be used to make determinations about individuals.

8. To the Office of Government Information Services (OGIS), NARA, to the extent necessary to fulfill its responsibilities in 5 U.S.C. 552(h) to review administrative policies, procedures, and compliance with the FOIA, and to facilitate OGIS' offering of mediation services to resolve disputes between persons making FOIA requests and administrative agencies.

9. To the appropriate agency or entity, whether Federal, State, local, tribal, territorial, foreign, or international, charged with the responsibility for investigating or prosecuting a violation of any law, rule, regulation, or order. Routine use for law enforcement purposes also includes disclosure to individuals or to agencies, whether Federal, State, local, tribal, territorial, foreign, or international, when necessary to further the ends of an investigation.

10. To the DOJ or any other Federal agency that is responsible for representing Department interests in connection with judicial, administrative, or other proceedings. This includes circumstances in which:

- (1) the Department or OIG, or any component thereof;
- (2) any employee of the Department or OIG in his or her official capacity;
- (3) any employee of the Department or OIG in his or her individual capacity, where DOJ or any other agency that is responsible for representing Department interests has agreed to represent or is considering a request to represent the employee; or
- (4) the United States, or any of its components, is a party to a pending or potential judicial, administrative, or other proceeding or has an interest in such proceeding; the Department or OIG is likely to be affected by the proceeding; or the Department or OIG determines that the use of such records by the DOJ or any other Federal agency that is responsible for representing Department interests is relevant and necessary to the proceeding.

11. To any source from which additional information is requested in order to obtain information relevant to: A decision by either the Department or OIG concerning the hiring, assignment, or retention of an individual or other personnel action; the issuance, renewal,

retention, or revocation of a security clearance; the execution of a security or suitability investigation; the letting of a contract; or the issuance, retention, or revocation of a license, grant, award, contract, or other benefit to the extent the information is relevant and necessary to a decision by the Department or OIG on the matter.

12. To a Federal, State, local, tribal, territorial, foreign, international, or other public authority in response to its request in connection with: The hiring, assignment, or retention of an individual; the issuance, renewal, retention, or revocation of a security clearance; the reporting of an investigation of an individual; the execution of a security or suitability investigation; the letting of a contract; or the issuance, retention, or revocation of a license, grant, award, contract, or other benefit conferred by that entity to the extent that the information is relevant and necessary to the requesting entity's decision on the matter.

13. In the event that a record, either by itself or in combination with other information, indicates a violation or potential violation of law or contract, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute or contract, or rule, regulation, or order issued pursuant thereto, or the necessity to protect an interest of the Department or OIG, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency or entity, whether federal, state, local, tribal, territorial, or foreign, or international, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute or contract, or rule, regulation or order issued pursuant thereto, or protecting the interest of the Department or OIG.

14. To any source from which additional information is requested, either private or governmental, to the extent necessary to solicit information relevant to any investigation, audit, or evaluation.

15. To a foreign government or international organization pursuant to an international treaty, convention, implementing legislation, or executive agreement entered into by the United States.

16. To contractors, grantees, consultants, or volunteers performing or working on a contract, service, grant, cooperative agreement, job, or other activity for the Department or OIG, who have a need to access the information in the performance of their duties or activities. When appropriate, recipients will be required to comply with the requirements of the Privacy Act as provided in 5 U.S.C. 552a(m).

17. To representatives of OPM, the Office of Special Counsel, the Merit Systems Protection Board, the Federal Labor Relations Authority, the Equal Employment Opportunity Commission, the Office of Government Ethics, and other Federal agencies in connection with their efforts to carry out their responsibilities to conduct examinations, investigations, and/or settlement efforts, in connection with administrative grievances, complaints, claims, or appeals filed by an employee, or as may be authorized by law.

18. To a grand jury agent pursuant to a Federal or State grand jury subpoena or to a prosecution request that such record be released for the purpose of its introduction to a grand jury.

19. To the Departments of the Treasury and Justice in circumstances in which OIG seeks to obtain, or has in fact obtained, an ex parte court order to obtain tax return information from the Internal Revenue Service.

20. To any Federal official charged with the responsibility to conduct qualitative assessment reviews of internal safeguards and management procedures employed in investigative operations for purposes of reporting to the President and Congress on the activities of OIG. This disclosure category includes other Federal Offices of Inspectors General and members of the Council of the Inspectors General on Integrity and Efficiency, and officials and administrative staff within their investigative chain of command, as well as authorized officials of DOJ and its component, the Federal Bureau of Investigation.

21. To appropriate agencies, entities, and persons when (1) the Department or the OIG suspects or has confirmed that there has been a breach of the system of records; (2) the

Department or the OIG has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, the Department, the OIG (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's or OIG's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

22. To another Federal agency or Federal entity, when the OIG determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

23. To the public or to the media for release to the public when (1) the matter under investigation has become public knowledge or the Inspector General determines that such disclosure is necessary to preserve confidence in the integrity of the Inspector General audit, inspection, review, or investigative process, or is necessary to demonstrate the accountability of Department employees, officers, or individuals covered by the system; and (2) the Inspector General, after receipt of a written recommendation from Counsel to the Inspector General, makes a written determination that the release of the specific information in the context of a particular case would not constitute an unwarranted invasion of personal privacy.

24. To Congress, congressional committees, or the staffs thereof, in order to fulfill the Inspector General's responsibility, as mandated by the Inspector General Act, to keep the Congress fully and currently informed concerning fraud and other serious problems, abuses, and deficiencies concerning the administration of programs and operations administered or financed by the Department.

25. To a Federal, State, local, or foreign agency, or other public authority, for use in computer matching programs or similar activities, as authorized by the Inspector General Act, to prevent and detect fraud, waste, and abuse and to support civil and criminal law enforcement activities of any agency or its components.

**POLICIES AND PRACTICES FOR STORAGE OF RECORDS:** Paper records and other media (photographs, audio recording, diskettes, CDs, etc.) are kept in limited-access areas during duty hours, which are locked during nonduty hours. Electronic records are maintained on servers, which house OIG's case management system and electronic discovery tool. Servers are maintained in a secured, restricted-area facility.

**POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:** Electronic searches may be performed by search criteria that include case numbers, names of individuals or organizations, and other key word search variations. Paper records are retrieved by indices cross-referenced to file numbers.

**POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:** Records are retained and disposed of in accordance with OIG Records Retention Schedules approved by NARA.

**ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:** Paper records are kept in limited-access areas during duty hours and in locked offices during nonduty hours, and are used only by authorized, screened personnel. Electronic records are stored on servers maintained in a locked facility that is secured at all times by security systems and video cameras. Data in the system are encrypted and password protected. Access to electronic records is restricted to OIG staff and contractors individually authorized to access the case management or electronic discovery system. Passwords are changed periodically, in accordance with OIG policy. Backup tapes are stored in a locked and controlled room in a secure off-site facility.

**RECORD ACCESS PROCEDURES:** The Inspector General has exempted this system from the access procedures of the Privacy Act.

**CONTESTING RECORD PROCEDURES:** The Inspector General has exempted this system from the contest procedures of the Privacy Act.

**NOTIFICATION PROCEDURES:** The Inspector General has exempted this system from the procedures of the Privacy Act relating to individuals' requests for notification of the existence of records on themselves.

**EXEMPTIONS PROMULGATED FOR THE SYSTEM:** Under 5 U.S.C. 552a(j)(2), the head of any agency may exempt any system of records within the agency from certain provisions of the Privacy Act, if the agency or component that maintains the system performs as its principal function any activities pertaining to the enforcement of criminal laws. The Inspector General Act mandates that the Inspector General recommend policies for, and conduct, supervise and coordinate activities in the Department and between the Department and other Federal, State, and local government agencies with respect to all matters relating to the prevention and detection of fraud in programs and operations administered or financed by the Department, and to the identification and prosecution of participants in such fraud. Under the Inspector General Act, whenever the Inspector General has reasonable grounds to believe there has been a violation of Federal criminal law, the Inspector General must report the matter expeditiously to the Attorney General. In addition to these principal functions pertaining to the enforcement of criminal laws, the Inspector General may receive and investigate complaints on information from various sources concerning the possible existence of activities constituting violations of law, rules, or regulations, or mismanagement, gross waste of funds, abuses of authority, or substantial and specific danger to the public health and safety. The provisions of the Privacy Act from which exemptions are claimed under 5 U.S.C. 552a(j)(2) are as follows: 5 U.S.C. 552a(c)(3) and (4); 5 U.S.C. 552a(d); 5 U.S.C. 552a(e)(1), (2) and (3); 5 U.S.C. 552a(e)(4)(G), (H), and (I); 5 U.S.C. 552a(e)(5) and (8); 5 U.S.C. 552a(f); and 5 U.S.C. 552a(g).

To the extent that the exemption under 5 U.S.C. 552a(j)(2) is held to be invalid, then the exemptions under 5 U.S.C. 552a(k)(1), (k)(2), and (k)(5) are claimed for all material which meets the criteria of these three subsections.

The provisions of the Privacy Act from which exemptions are claimed under 5 U.S.C. 552a(k)(1), (k)(2) and (k)(5) are as follows: 5 U.S.C. 552a(c)(3); 5 U.S.C. 552a(d); 5 U.S.C. 552a(e)(1); 5 U.S.C. 552a(e)(4)(G), (H), and (I); and 5 U.S.C. 552a(f).

Reasons for exemptions: In general, the exemption of this information and material is necessary to accomplish the law enforcement function of the Office of Inspector General, to prevent subjects of investigations from frustrating the investigatory process, to prevent the disclosure of investigative techniques, to fulfill commitments made to protect the confidentiality of sources, to maintain access to sources of information, and to avoid endangering these sources and law enforcement personnel. Additional details are as follows:

Reasons for exemptions under 5 U.S.C. 552a(j)(2) and (k)(2):

(1) 5 U.S.C. 552a(c)(3) requires that upon request, an agency must give an individual named in a record an accounting which reflects the disclosure of the record to other persons or agencies. This accounting must state the date, nature, and purpose of each disclosure of the record and the name and address of the recipient. The application of this provision would alert subjects of an investigation to the existence of the investigation and that such persons are subjects of that investigation. Since release of such information to subjects of an investigation would provide the subjects with significant information concerning the nature of the investigation, it could result in the altering or destruction of documentary evidence, improper influencing of witnesses, and other activities that could impede or compromise the investigation. More broadly, the application of this provision could reveal the OIG's investigative interests, which could compromise those investigative interests. Application of this provision could also disclose the confidentiality or privacy interests of others.

(2) 5 U.S.C. 552a(c)(4), (d), (e)(4)(G) and (H), (f) and (g) relate to an individual's right to be notified of the existence of records pertaining to such individual; requirements for identifying an individual who requests access to records; the agency procedures relating to access to records and the content of information contained in such records; and the civil remedies available to the individual in the event of adverse determinations by an agency concerning access to or amendment of information contained in records systems. This system is exempt from the foregoing provisions for the reasons set forth in this paragraph. Notifying an individual at the individual's request of the existence of investigative records pertaining to such individual, or granting access to an investigative file, could interfere with investigative and enforcement proceedings, deprive co-defendants of a right to a fair trial or other impartial adjudication, constitute an unwarranted invasion of personal privacy of others, disclose the identity of confidential sources, reveal confidential information supplied by these sources, and disclose investigative techniques and procedures.

(3) 5 U.S.C. 552a(e)(4)(I) requires the publication of the categories of sources of records in each system of records. The application of this provision could require disclosure of investigative techniques and procedures and cause sources to refrain from giving such information because of fear of reprisal, or fear of breach of promises of anonymity and confidentiality. This would compromise the ability to conduct investigations, and to identify, detect, and apprehend violators.

(4) 5 U.S.C. 552a(e)(1) requires each agency to maintain in its records only such information about an individual that is relevant and necessary to accomplish a purpose of the agency required by statute or Executive Order. An exemption from the foregoing is needed:

a. Because it is not possible to determine relevance or necessity of specific information in the early stages of a criminal or other investigation.

b. Relevance and necessity are questions of judgment and timing. What appears relevant and necessary when collected may ultimately be determined to be unnecessary. It is only after

the information is evaluated that the relevance and necessity of such information can be established.

c. In any investigation the Inspector General may obtain information concerning the violations of laws other than those within the scope of his or her jurisdiction. In the interest of effective law enforcement, the Inspector General should retain this information as it may aid in establishing patterns of criminal activity and provide leads for those law enforcement agencies charged with enforcing other segments of criminal or civil law.

d. In interviewing persons, or obtaining other forms of evidence during an investigation, information may be supplied to the investigator which relates to matters incidental to the main purpose of the investigation, but which may relate to matters under the investigative jurisdiction of another agency. Such information cannot readily be segregated.

(5) 5 U.S.C. 552a(e)(2) requires an agency to collect information to the greatest extent practicable directly from the subject individual when the information may result in adverse determinations about an individual's rights, benefits, and privileges under Federal programs. The application of the provision would impair investigations of illegal acts, violations of the rules of conduct, merit system, and any other misconduct for the following reasons:

a. In certain instances the subject of an investigation cannot be required to supply information to investigators. In those instances, information relating to a subject's illegal acts, violations of rules of conduct, or any other misconduct, etc., must be obtained from other sources.

b. Most information collected about an individual under investigation is obtained from third parties such as witnesses and informers. It is not feasible to rely upon the subject of the investigation as a source for information regarding his or her activities.

c. The subject of an investigation will be alerted to the existence of an investigation if any attempt is made to obtain information from the subject. This could afford the individual the opportunity to conceal any criminal activities to avoid apprehension.

d. In any investigation, it is necessary to obtain evidence from a variety of sources other than the subject of the investigation to verify the evidence necessary for successful litigation.

(6) 5 U.S.C. 552a(e)(3) requires that an agency must inform an individual who is asked to supply information of:

a. The authority under which the information is sought and whether disclosure of the information is mandatory or voluntary,

b. The purposes for which the information is intended to be used,

c. The routine uses which may be made of the information, and

d. The effects on the individual, if any, of not providing the requested information. The reasons for exempting this system of records from the foregoing provision are as follows:

(i) The disclosure to the subject of the investigation as stated in (b) above would provide the subject with substantial information relating to the nature of the investigation and could impede or compromise the investigation.

(ii) If the subject were informed of the information required by this provision, it could seriously interfere with undercover activities requiring disclosure of undercover agents' identity and impairing their safety, as well as impairing the successful conclusion of the investigation.

(iii) Individuals may be contacted during preliminary information-gathering in investigations before any individual is identified as the subject of an investigation. Informing the individual of the matters required by this provision would hinder or adversely affect any present or subsequent investigations.

(7) 5 U.S.C. 552a(e)(5) requires that records be maintained with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in making any determination about an individual. Because the law defines "maintain" to include the collection of information, complying with this provision would prevent the collection of any data not shown to be accurate, relevant, timely, and complete at the moment of its collection. In gathering information during the course of an investigation it is not possible to

determine this prior to collection of the information. Facts are first gathered and then placed into a logical order which objectively proves or disproves criminal behavior on the part of the suspect. Material which may seem unrelated, irrelevant, incomplete, untimely, etc., may take on added meaning as an investigation progresses. The restrictions in this provision could interfere with the preparation of a complete investigative report.

(8) 5 U.S.C. 552a(e)(8) requires an agency to make reasonable efforts to serve notice on an individual when any record of such individual is made available to any persons under compulsory legal process when such process becomes a matter of public record. The notice requirements of this provision could prematurely reveal an ongoing criminal investigation to the subject of the investigation.

Reasons for exemptions under 5 U.S.C. 552a(k)(1):

(1) 5 U.S.C. 552a(c)(3) requires that upon request, an agency must give an individual named in a record an accounting which reflects the disclosure of the record to other persons or agencies. This accounting must state the date, nature, and purpose of each disclosure of the record and the name and address of the recipient. The application of this provision would alert subjects of an investigation to the existence of the investigation, and that such persons are subjects of that investigation, information which if known might cause damage to national defense or foreign policy.

(2) 5 U.S.C. 552a(d), (e)(4)(G) and (H), and (f) relate to an individual's right to be notified of the existence of records pertaining to such individual; requirements for identifying an individual who requests access to records; and the agency procedures relating to access to records and the content of information contained in such records. This system is exempt from the foregoing provisions for the following reasons: To notify an individual at the individual's request of the existence of records in an investigative file pertaining to such individual or to grant access to an investigative file could interfere with investigations undertaken in connection with

national security; or could disclose the identity of sources kept secret to protect national defense or foreign policy or reveal confidential information supplied by these sources.

(3) 5 U.S.C. 552a(e)(4)(I) requires the publication of the categories of sources of records in each system of records. The application of this provision could disclose the identity of sources kept secret to protect national defense or foreign policy.

(4) 5 U.S.C. 552a(e)(1) requires each agency to maintain in its records only such information about an individual that is relevant and necessary to accomplish a purpose of the agency required by statute or Executive Order. An exemption from the foregoing is needed:

a. Because it is not possible to determine relevance or necessity of specific information in the early stages of an investigation involving national defense or foreign policy matters.

b. Relevance and necessity are questions of judgment and timing. What appears relevant and necessary when collected may ultimately be determined to be unnecessary. It is only after the information is evaluated that the relevance and necessity of such information can be established.

c. In any investigation the Inspector General may obtain information concerning the violations of laws other than those within the scope of his or her jurisdiction. In the interests of effective law enforcement, the Inspector General should retain this information as it may aid in establishing patterns of criminal activity and provide leads for those law enforcement agencies charged with enforcing other segments of criminal or civil law.

d. In interviewing persons, or obtaining forms of evidence during an investigation, information may be supplied to the investigator which relate to matters incidental to the main purpose of the investigation, but which may relate to matters under the investigative jurisdiction of another agency. Such information cannot readily be segregated.

Reasons for exemptions under 5 U.S.C. 552a(k)(5):

(1) 5 U.S.C. 552a(c)(3) requires that upon request, an agency must give an individual named in a record an accounting which reflects the disclosure of the record to other persons or

agencies. This accounting must state the date, nature, and purpose of each disclosure of the record and the name and address of the recipient. The application of this provision would alert subjects of an investigation to the existence of the investigation and that such persons are subjects of that investigation. Since release of such information to subjects of an investigation would provide the subject with significant information concerning the nature of the investigation, it could result in the altering or destruction of documentary evidence, improper influencing of witnesses, and other activities that could impede or compromise the investigation.

(2) 5 U.S.C. 552a(d), (e)(4)(G) and (H), and (f) relate to an individual's right to be notified of the existence of records pertaining to such individual; requirements for identifying an individual who requests access to records; and the agency procedures relating to access to records and the content of information contained in such records. This system is exempt from the foregoing provisions for the reasons set forth in this paragraph. Notifying an individual at the individual's request of the existence of investigative records pertaining to such individual, or granting access to an investigative file, could interfere with investigative and enforcement proceedings, deprive co-defendants of a right to a fair trial or other impartial adjudication, constitute an unwarranted invasion of personal privacy of others, disclose the identity of confidential sources and reveal confidential information supplied by these sources, and disclose investigative techniques and procedures.

(3) 5 U.S.C. 552a(e)(4)(I) requires the publication of the categories of sources of records in each system of records. The application of this provision could disclose investigative techniques and procedures and cause sources to refrain from giving such information because of fear of reprisal, or fear of breach of promises of anonymity and confidentiality. This would compromise the ability to conduct investigations, and to make fair and objective decisions on questions of suitability for Federal employment and related issues.

(4) 5 U.S.C. 552a(e)(1) requires each agency to maintain in its records only such information about an individual that is relevant and necessary to accomplish a purpose of the agency required by statute or Executive Order. An exemption from the foregoing is needed:

a. Because it is not possible to determine relevance or necessity of specific information in the early stages of an investigation.

b. Relevance and necessity are questions of judgment and timing. What appears relevant and necessary when collected may ultimately be determined to be unnecessary. It is only after that information is evaluated that the relevance and necessity of such information can be established.

c. In any investigation the Inspector General may obtain information concerning the violations of laws other than those within the scope of his or her jurisdiction. In the interest of effective law enforcement, the Inspector General should retain this information as it may aid in establishing patterns of criminal activity and provide leads for those law enforcement agencies charged with enforcing other segments of criminal or civil law.

d. In interviewing persons, or obtaining other forms of evidence during an investigation, information may be supplied to the investigator which relate to matters incidental to the main purpose of the investigation, but which may relate to matters under investigative jurisdiction of another agency. Such information cannot readily be segregated.

#### **HISTORY:**

80 FR 34887	June 18, 2015	Effective Date Notice
80 FR 26217	May 7, 2015	Notice of Proposed Amendment
77 FR 15038	March 14, 2012	Effective Date Notice
77 FR 5234	February 2, 2012	Notice of Proposed Amendment
77 FR 2692	January 19, 2012	Notice of Proposed Amendment

**March 29, 2022**

**Notice of New System of Record.**

**Jennifer Goode,**

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*Director of the Office of Privacy and Open Government.*

[FR Doc. 2022-12565 Filed: 6/10/2022 8:45 am; Publication Date: 6/13/2022]